



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 11, 2003

Ms. Sara Shiplet Waitt  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2003-4804

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184104.

The Texas Department of Insurance ("TDI") received a request for "proposal copies of the phase two finalists" with respect to a specified request for proposals. You indicate that you will release most of the requested information. However, you claim that the remaining requested information is excepted from disclosure under sections 552.128 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.128 of the Government Code protects the interests of historically underutilized and disadvantaged businesses. Section 552.128 provides:

- (a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.
- (b) Notwithstanding Section 552.007 and except as provided by Subsection
- (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

You argue that the submitted applications are excepted under section 552.128 because they consist of copies of applications originally submitted to the Texas Building and Procurement Commission for certification as a historically disadvantaged business. However, you also state that the submitted applications were submitted to TDI by Resolution Oversight Corporation as part of the bid proposal. Therefore, pursuant to section 552.128(c), the submitted applications are subject to disclosure and may not be withheld under section 552.128.

We note, however, that portions of the submitted documents contain information that is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy. We have marked personal financial information that is confidential under section 552.101 in conjunction with common-law privacy. This office has concluded that financial information concerning an individual is in some instances protected by a common law right to privacy. *See Open Records Decision Nos. 545 (1990), 523 (1989)*. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental

body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). In this instance, the personal financial information does not involve a financial transaction between an individual and a governmental body. You must withhold the personal financial information that we have marked.

The submitted documents contain social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the document are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by TDI pursuant to any provision of law, enacted on or after October 1, 1990.

You argue that the remaining information contains e-mail addresses of members of the public that are confidential under section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You inform us that the members of the public whose e-mail addresses appear in the submitted information have not consented to the release of any e-mail address contained in the submitted materials. TDI must, therefore, withhold e-mail addresses of members of the public that you have marked, as well as e-mail addresses that we have marked, under section 552.137. You must release the remainder of the requested information to the requestor.

In summary, you must withhold the personal financial information that we have marked under section 552.101 and common-law privacy. Social security numbers may be confidential under federal law. You must withhold the e-mail addresses you have marked,

as well as the e-mail addresses that we have marked, under section 552.137. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

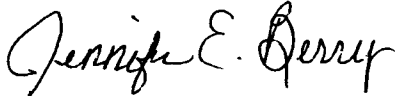
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is fluid and cursive, with the first name "Jennifer" being the most prominent part.

Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 184104

Enc: Submitted documents

c: Mr. Scott C. Spradling  
8205 Pax Drive  
Austin, Texas 78736  
(w/o enclosures)